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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,077	06/23/2003	Stephen Suffin	10701-011	1225
20583	7590	07/25/2006	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			JONES, DAMERON LEVEST	
			ART UNIT	PAPER NUMBER
			1618	
DATE MAILED: 07/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,077

Applicant(s)

SUFFIN, STEPHEN

Examiner

D. L. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-42 and 50-60 is/are pending in the application.
- 4a) Of the above claim(s) 57-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-42 and 50-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the amendment filed 5/5/06 wherein claims 1-39 and 43-49 are canceled; claims 40-42 are amended; and claims 50-60 are added.

Note: Claims 40-42 and 50-60 are pending.

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/5/06 has been entered.

RESPONSE TO APPLICANT'S AMENDMENT/ARGUMENTS

3. The Applicant's arguments and/or amendment filed 5/5/06 to the rejection of claims 40-42 made by the Examiner under 35 USC 103, 112, and/or double patenting have been fully considered and deemed persuasive-in-part for the reasons set forth below.

Double Patenting Rejection

The provisional rejection of claim 40 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 49 of copending application

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number 10/193,735 is MAINTAINED for reasons of record in the office action mailed 11/30/05 and those set forth below.

Applicant asserts that the rejection should be withdrawn because claim 49 of the copending application has been canceled in response to a restriction requirement election.

Applicant's assertion is non-persuasive because review of the copending application on 7/20/06 indicated that claim 49 is still pending in the application.

112 Rejections

The 112, second paragraph, rejection is WITHDRAWN because Applicant amended the claims to overcome the rejection.

103 Rejection

The 103 rejection is WITHDRAWN because Applicant has amended the claims to overcome the rejection.

ELECTION BY ORIGINAL PRESENTATION

4. Newly submitted claims 57-60 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claims are directed to a different invention involving different method steps (e.g., see independent claim 57, steps iii, d, and e) which are different from that previously examined.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 57-60 are withdrawn from consideration

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as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

NEW GROUNDS OF REJECTIONS

112, First Paragraph, Rejection (New Matter)

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 54-56 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant has added new claims 54-56 which disclose that the frequency band ranges from approximately 0.5 to 35 Hertz. However, the specification (page 11, lines 8-9, disclose that the QEEG spectrum is divided into four frequency bands: delta (0.5-3.5 Hz); theta (3.5-7.5 Hz); alpha (7.5-12.5 Hz); and beta (12.5-35 Hz). However, independent claim 54 as written does not require that the spectrum generated by the QEEG spectrum and does not require that the frequency band be selected from the group consisting of delta, theta, alpha, and beta.

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102 Rejection

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 40-42 and 50-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen et al (Neuropsychopharmacology, 1993, Vol. 8, No. 4, pages 365-370).

Cohen et al disclose ethanol induced alteration in electroencephalographic (EEG) activity in males. The effects of placebo, low dose, and high dose ethanol on EEG activity were analyzed. The Fast Fourier Transform was used to calculate power spectral densities for each EEG recording. Measures of the relative areas under the power spectral curve were made for each of the following frequency bands: slow alpha (7.5-10 Hz), fast alpha (10.5-13 Hz); slow beta (13.5-19.5 Hz); and fast beta (20-26 Hz). Repeated measures of multivariate analysis of variance were performed on normalized relative area values revealed that ethanol had significant effects on EEG activity at anterior sites: frontal and central (see entire document, especially, abstract; pages 366-367, 'Methods'; page 367, 'Data Analysis'; page 368, Figure 2). Thus, both Applicant and Cohen et al disclose a method of determining drug efficacy in a subject wherein a subject is administered a drug, EEG activity is monitored, and at least one multivariate outcome measurement (i.e., alpha beta, theta, and/or delta) frequency band is generated and compared with a second EEG.

OBJECTION TO THE SPECIFICATION

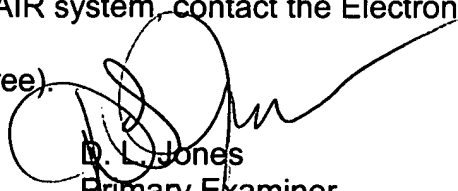
The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Note: Applicant's attention is directed to page 12, lines 1-2 of the specification.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. L. Jones
Primary Examiner
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July 20, 2006